



SPONSOR: Rep. Heffernan & Sen. McDowell & Sen. Bushweller
Reps. Keeley, Kowalko; Sens. Cloutier, Sokola

HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE BILL NO. 321

AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE RELATING TO CONSUMER CONTRACTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Subchapter IV, Chapter 27, Title 6 of the Delaware Code by making deletions as shown by
2 strike through and insertions as shown by underline as follows:

3 § 2731. Definitions.

4 As used in this subchapter:

5 (1) "Consumer" means an individual who purchases or leases merchandise primarily for personal, family or
6 household purposes.

7 (2) "Lease" means any lease, offer to lease or attempt to lease any merchandise.

8 (3) "Merchandise" means any objects, wares, goods, commodities, intangibles, real estate or services, other than
9 insurance.

10 (4) "Person" means an individual, corporation, government or governmental subdivision or agency, statutory trust,
11 business trust, estate, trust, partnership, unincorporated association, 2 or more of any of the foregoing having a joint or
12 common interest or any other legal or commercial entity.

13 (5) "Sale" means any sale, offer for sale or attempt to sell any merchandise for cash or credit.

14 (6) "Clearly and conspicuously" means both of the following:

15 a. In larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the
16 same size, or set off from the surrounding text of same size by symbols or other marks, in a manner that clearly calls
17 attention to the language.

18 b. In close proximity to the request for acceptance of the offer or signature line.

19 § 2732. Deceptive practices in consumer contracts.

20 In a contract for the sale or lease of merchandise to a consumer, a person engages in a deceptive practice when that
21 person knowingly or recklessly does any of the following:

(1) Distorts or obscures the terms, conditions or meaning of the contract or creates a likelihood of confusion or misunderstanding by the use of unintelligible words, phrases or sentences, ~~or~~

(2) Omits information required by law to be disclosed in contracts with a consumer.

(3) Fails to comply with the provisions of § 2732A of this subchapter.

§ 2732A. Automatic renewal; requirements.

(a) Any person that sells or leases any merchandise to a consumer, where such contract is in writing and automatically renews unless the consumer cancels the contract, shall disclose the automatic renewal clause clearly and conspicuously in a written contract, including the cancellation procedure.

(b) In the case of an offer to sell or lease any merchandise to a consumer that is conveyed by voice, notification of the terms of the automatic renewal must be disclosed in temporal proximity to the request for acceptance of the offer and must be followed by delivery of a written disclosure of all terms including a clear and conspicuous disclosure of the automatic renewal, including the cancellation procedure.

(c) Any person that sells or leases merchandise to a consumer pursuant to a contract, where such contract automatically renews for a specified term of more than one month unless the consumer cancels the contract, shall notify the consumer in writing of the automatic renewal. The written notice must be provided to the consumer no less than 30 days and no more than 60 days before the cancellation deadline pursuant to the automatic renewal clause. The consumer must acknowledge in writing both receipt of the notice and an understanding of the terms and conditions of the automatic renewal. Such written notice shall disclose clearly and conspicuously both of the following:

(1) That unless the consumer cancels the contract it will automatically renew.

(2) Where the consumer can obtain details of the automatic renewal provision and cancellation procedure (for example, by contacting the business at a specified telephone number or e-mail address, or by referencing an attached or enclosed copy of the contract).

(d) A person will not be held liable for a violation of this section if such person demonstrates all of the following:

(1) The person has established and implemented written procedures to comply with the requirements of this section.

(2) Any failure to comply with this section is the result of error.

(3) Where an error has occurred that results in failure to comply with this Act, a full refund or credit for all amounts billed to or paid by the consumer from the date of the renewal until the date of termination of the account, or the date of a subsequent compliant notice of renewal, whichever occurs first.

(e) This section does not apply to any contracts dated prior to [the effective date of this Act].

SYNOPSIS

This Act requires that consumer contracts which contain automatic renewal provisions, also known as “evergreen clauses”, must clearly and conspicuously disclose the terms of the automatic renewal and procedures for cancelling the renewal. In contracts that renew after 12 months or more, the provider of goods or services must provide an additional written notice to the consumer no less than 60 and no more than 30 days before the time for cancellation expires, along with information on how to cancel. This provision allows businesses to continue the practice of using automatic renewals, while seeking to ensure consumers are fully aware of the terms of the contract and are not caught off guard by a renewal buried somewhere in the fine print.

Violation of the terms of this Act can result in an award to the consumer of treble damages plus attorneys fees and may also be addressed through the authority of the Consumer Protection Unit of the Department of Justice pursuant to provisions in subchapter IV. A business will not be held liable if it can show that it has put in place policies and procedures to comply with this Act, and that any violation of the renewal provisions was the result of an error, and that any funds collected from a consumer in violation of the Act have been refunded.